Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Performance Measurements and Standards for Interstate Special Access Services	)	CC Docket No. 01-321
	)	
Petition of U S West, Inc., for a Declaratory Ruling Preempting State Commission Proceedings to Regulate U S West's Provision of Federally Tariffed Interstate Access Services	)	CC Docket No. 00-51
	)	
Petition of Association for Local Telecommunications Services for Declaratory Ruling	)	CC Docket Nos. 98-147, 96-98, 98-141
	)	
Implementation of the Non-Accounting Safeguards Of Sections 271 and 272 of the Communications Act of 1934, as amended	)	CC Docket No. 96-149
	)	
2000 Biennial Regulatory Review — Telecommunications Service Quality Reporting Requirements	)	CC Docket No. 00-229
	)	
AT&T Corp. Petition to Establish Performance Standards, Reporting Requirements, and Self-Executing Remedies Need to Ensure Compliance By ILECs with Their Statutory Obligations Regarding Special Access Services	)	RM 10329

SBC COMMUNICATIONS INC. COMMENTS

Christopher M. Heimann
Gary L. Phillips
Paul K. Mancini

SBC COMMUNICATIONS INC.
1401 Eye Street, N.W., Suite 400
Washington, D.C. 20005
(202) 326-8909 – Phone
(202) 408-8745 – Facsimile

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COMMENTS OF SBC COMMUNICATIONS INC.

SBC Communications Inc., on behalf of itself and its subsidiaries (collectively referred to as "SBC"), submits these comments in response to the Commission's notice of proposed rulemaking regarding the adoption of performance measurements and standards for evaluating ILEC performance in the provision of special access services.[1]

[1] *In the Matter of Performance Measurements and Standards for Interstate Special Access Services; Petition of U S West, Inc., for a Declaratory Ruling Preempting State Commission Proceedings to Regulate U S West's Provision of Federally Tariffed*

I. Introduction and Summary.

In the Notice, the Commission raises a host of questions regarding implementation and enforcement of special access performance measures and standards. However, as the Commission correctly observes, before it entertains such questions, it first must determine whether such regulation is at all necessary in light of current market conditions.[2] It is not.

As discussed below, there already are multitudes of competitive choices for special access services. Hundreds of competitive carriers have invested billions of dollars in new fiber networks and other facilities (such as fixed microwave) capable of providing special access services. Those networks and facilities now serve virtually every area in which customers demand special access service, and readily can be extended to any potential customer whom they do not already serve.

Interstate Access Services; Petition of Association for Local Telecommunications Services for Declaratory Ruling; Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended; 2000 Biennial Regulatory Review — Telecommunications Service Quality Reporting Requirements; AT&T Corp. Petition to Establish Performance Standards, Reporting Requirements, and Self-Executing Remedies Need to Ensure Compliance by ILECs with Their Statutory Obligations Regarding Special Access Services, CC Docket Nos. 01-321, 00-51, 98-147, 96-98, 98-141, 96-149, 00-229, RM 10329, Notice of Proposed Rulemaking, FCC 01-339 (rel. Nov. 19, 2001) (NPRM or Notice). Because special access performance measurements are unnecessary in light of market conditions, SBC does not address specific questions in the Notice regarding, for example, the scope, substance, and implementation of special access performance measurements, including performance remedy plans. However, SBC notes that, even if the Commission were to adopt special access performance measurements, it could not adopt a self-effectuating liquidated damages requirement for the reasons discussed in SBC's comments in the Commission's *UNE Performance Measurements Proceeding*. *See*, Comments of SBC Communications Inc., *In the Matter of Performance Measurements and Standards for Unbundled Network Elements and Interconnection*, CC Docket No. 01-318 (Jan. 22, 2002) (*UNE Performance Measurements Proceeding*).

As one would expect, given the plethora of competitive alternatives for special access services, special access service providers have responded to customer demand by offering a variety of service options that provide subscribers the mix of service quality and price that best meets their business needs. For example, SBC's standard special access tariffs already contain performance measurements and penalties for missing certain targets. SBC also has developed Managed Value Plan (MVP) tariffs with performance standards that go beyond the standard tariff provisions, and provide for liquidated damages for missed targets. In addition, SBC has worked with customers to develop special access performance plans that meet those customers' specific business plans. In each of these cases, market forces, not regulation, impelled SBC to work with its customers to meet their needs.

In this context, economic regulation, such as the imposition of performance measurements and standards, is unnecessary. The Commission itself has long recognized that, absent market power, the discipline of the market is far more effective at allocating resources and assuring that suppliers meet customer demand than regulation.[3] As Chairman Powell has aptly observed, "in the absence of real, identifiable market power, the market allows consumers to make themselves better off. The market also allows

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[2] Notice, FCC 01-339 at para. 13-14.

[3] *See, e.g., Policy and Rules Concerning Rates for Competitive Carrier Services and Facilities Authorization Therefor*, CC Docket No. 79-252, Further Notice of Proposed Rulemaking, 84 F.C.C.2d 445, 448-455 (1981) (*Competitive Carrier FNPRM*); *Policy and Rules Concerning Rates for Competitive Carrier Services and Facilities Authorization Therefor*, CC Docket No. 79-252, Second Report and Order, 91 F.C.C.2d 59, 60-62 (1982) (*Second Report and Order*) (Title II regulation, which was intended to constrain the exercise of substantial market power, when applied to carriers without such power is unnecessary and contrary to the goals of the Act).

consumers to protect themselves by selecting a new provider that the consumer, rather than regulators, believes offers an adequate substitute or even a superior product or service."[4]

Imposition of special access performance standards would distort competition in the special access market by forcing carriers to focus on meeting government requirements, and thus diverting their attention and resources away from meeting the needs of their customers. Imposition of such standards also would increase significantly the cost of providing such services. In particular, implementing standards would require a carrier to expend significant time and resources to develop, deploy and maintain new systems and procedures to gather, analyze and report performance data. If SBC's experience in implementing performance measurements for wholesale facilities and services is any guide, these costs, which ultimately would be passed on to consumers, would be enormous.[5] Thus, rather than protecting consumers, special access performance standards would distort the market and limit customer choice.

Imposition of special access performance measurements only on incumbent LECs would be particularly indefensible. The Commission has long recognized that telecommunications carriers should be treated equally absent a compelling reason to do otherwise.[6] Likewise, the Department of Justice has stated: "Applying different degrees

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[4] Remarks of Commissioner Michael K. Powell before the FCBA, Chicago Chapter, June 15, 1999 (as prepared for delivery).

[5] *See* Section II of SBC's comments in the *UNE Performance Measurements Proceeding*.

[6] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499, 15989 (1999) ("[A]s a general policy matter, . . . all telecommunications carriers that compete with each other should be treated alike . . . unless there is a compelling reason to do otherwise."); *Implementation of Section 3(n)*

of regulation to firms in the same market necessarily introduces distortions into the market; competition will be harmed if some firms face unwarranted regulatory burdens not imposed on their rivals.[7] In a competitive market, like the special access market, imposing costly and burdensome performance measurement requirements only on ILECs would have a profound impact on who succeeds and fails in the marketplace. The Commission could not impose special access performance measurements requirements only on ILECs without departing from long-standing Commission policy and sound economic policy.

Regulatory intervention should be reserved for instances of market failure. Where the market is functioning, as it plainly is for special access services, the Commission should disregard the Siren's song for increased regulation.

II. Special Access Performance Measures Would Be Contrary to the Goals of the Act and Longstanding Commission Policy.

A. The 1996 Act and Commission Policy Dictate that Decreased Regulation Should Accompany Increased Competition.

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and 332 of the Communications Act, Regulatory Treatment of Mobile Services, 9 FCC Rcd, 1411, 1420 (1994) ("Success in the marketplace should be driven by technological innovation, service quality, competition-based pricing decisions, and responsiveness to consumer needs — and not by strategies in the regulatory arena. [Thus] even-handed regulation, in promoting competition, should help lower prices, generate jobs, and produce economic growth.").

[7] Reply Comments of the Department of Justice, *Competition in the Interstate, Interexchange Marketplace*, CC Docket No. 90-132, at 26, n. 42 (filed Sept. 29, 1990).

The Commission long has recognized that economic regulation (such as price and service quality controls) is unnecessary in competitive markets, and therefore that decreased regulation should accompany increased competition. Over twenty years ago, in the *Competitive Carrier Proceeding*, the Commission acknowledged that regulation of competitive markets is unnecessary because market forces will protect consumers against unjust and unreasonable rates and practices, and assure that firms provide the types and quality of services demanded by their customers.[8] Consequently, the Commission increasingly has relaxed its regulatory treatment of competitive carriers by eliminating regulatory burdens that are not necessary to protect consumers in light of marketplace developments.[9]

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[8] *Competitive Carrier FNPRM* at 456-57 (observing that, in a competitive marketplace, alternative sources of supply are readily available, and there is no need to control prices and service quality through a regulatory device); *Second Report and Order* at 60-62 (concluding that comprehensive Title II regulation was intended to constrain the exercise of substantial market power, and, when applied to carriers without such power is contrary to the goals of the Act).

[9] For example, in the *Competitive Carrier Proceeding*, the Commission relaxed its tariff filing and facilities authorization requirements for non-dominant carriers. *See Competitive Carrier Proceeding*, Fifth Report and Order, 98 F.C.C.2d 1191, 1192 (1984) (providing some of the history of the *Competitive Carrier Proceeding*). Although the Commission's tariff forbearance policy adopted in the *Competitive Carrier Proceeding* was overturned, it was reinstated after the 1996 Act expressly granted the Commission forbearance authority. *Policies and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1996*, CC Docket No. 96-61, Second Report and Order, 11 FCC Rcd 20730 (1996), *aff'd MCI, et al v. FCC*, 209 F.3d 760 (D.C. Cir. 2000). More recently, the Commission adopted pricing flexibility for incumbent LEC special access services in light of competition for such services. *Access Charge Reform*, CC Docket No. 96-262, Fifth Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 14221 (1999) (*Pricing Flexibility Order*), *aff'd*, *WorldCom, Inc. v. FCC*, 235 F.3d 449 (D.C. Cir. 2001). It also has proposed to eliminate the bulk of its existing service quality reporting requirements because such requirements no longer make sense in increasingly competitive telecommunications markets. *2000 Biennial Regulatory Review — Telecommunications*

But regulation in competitive markets not only is unnecessary it also distorts markets and runs counter to the goals of the Act. In particular, regulation impedes a carrier's ability to respond quickly to changes in demand and bargain with customers, and imposes costs that ultimately will be passed on to consumers.[10] Indeed, "[t]he regulators' rush to lend a helping hand at the first sign of anxiety has proven, so often, to be more disruptive and counter-productive than the converse."[11]

The Commission's policy of decreasing regulation in the face of emerging competition, which was adopted more than 20 years ago, now is incorporated expressly into the Communications Act. In the Telecommunications Act of 1996, Congress declared its goal was "to promote competition *and reduce regulation* in order to secure

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Service Quality Reporting Requirements, CC Docket No. 00-229, Notice of Proposed Rulemaking, 15 FCC Rcd 22113 (2000). *See also WorldCom v. FCC*, 238 F.3d at 452 (noting that, "as telephone markets become more competitive, the FCC has lessened regulatory control over those markets, including the market for interstate access services.").

[10] *Competitive Carrier FNPRM*, at 453-54. The Commission has observed that, "[h]owever one perceives the ultimate cost benefit tradeoff in the context of regulating dominant firms, it seems clear that the application of these same regulations to firms that possess insignificant market power imposes costs without any corresponding benefits." *Id.* at 453.

[11] Statement of Commissioner Powell before the Senate Committee on Commerce, Science and Development, May 26, 1999. *See also* Remarks of Commissioner Michael K. Powell before the FCBA, Chicago Chapter, June 15, 1999 (as prepared for delivery). ("In cases where there is true, identifiable market power, [regulatory] intervention arguably costs individuals and society nothing, as consumers did not have a real choice anyway. In the absence of market power, however, . . . government intervention comes at the expense of our freedom and welfare. . . . [M]arkets unquestionably deploy resources better and more consistently than does the state. Thus, restraint should be the watchword for governments . . .").

lower prices and higher quality services for American telecommunications consumers."[12] Thus, as the Commission stated in its brief to the D.C. Circuit supporting pricing flexibility for special access services, "Congress anticipated in adopting the 1996 Act that increased competition would go hand in hand with reduced regulation."[13] Indeed, in the 1996 Act, Congress specifically required the Commission, in every even-numbered year beginning in 1998, to review *all* regulations applicable to the operations and activities of any provider of telecommunications service and determine whether any of these regulations are no longer necessary in the public interest as the result of meaningful competition.[14] The Commission therefore should adopt special access performance measurements only if it concludes, contrary to the evidence, that the special access market is not competitive.

B. The Special Access Market is Competitive.

Marketplace evidence already before the Commission in other proceedings establishes that vibrant competition for special access services is widespread and growing rapidly.[15] Between 1999 and the end of 2000, for example, the number of carriers

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[12] The Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996), *codified at* 47 U.S.C. §§151 *et seq.* (1996 Act) (emphasis added).

[13] FCC Brief at 8.

[14] 47 U.S.C. § 161.

[15] *See* Joint Petition of BellSouth, SBC, and Verizon for Elimination of Mandatory Unbundling of High-Capacity Loops and Dedicated Transport, CC Docket No. 96-98 (filed Apr. 5, 2001) (Joint Petition); *Id.*, Attachment B (Competition for Special Access Service, High-Capacity Loops, and Interoffice Transport) ("Special Access Fact Report"); Joint Petition of BellSouth, SBC, and Verizon for Elimination of Mandatory Unbundling of High-Capacity Loops and Dedicated Transport, Reply of BellSouth, SBC and Verizon, CC Docket No. 96-98 (filed June 25, 2001) (Joint Reply); *Id.*, Attachment

providing competitive access service tripled, from 109 to 349, competitors' special access revenues increased approximately 30 percent, and CLECs' share of the special access/private line market increased 10 percent, from 33 to 36 percent.[16]

It is no answer to claim, as some undoubtedly will, that competitors have not yet deployed competitive local fiber in every town. As the Special Access Fact Report demonstrates, because of the characteristics of the special access market (e.g., large businesses, including interexchange carriers, located in concentrated areas), competitors quickly and easily can extend their networks and services to new areas and customers in response to demand.[17] The prevalence of alternative facilities and rapid pace at which they have been and continue to be deployed demonstrates that competitive facilities and special access services are or will be available everywhere there are business subscribers that desire such services.[18]

A (Rebuttal Report Regarding Competition for Special Access Service, High-Capacity Loops, and Interoffice Transport) ("Rebuttal Fact Report"). SBC hereby incorporates the foregoing documents by reference.

[16] Special Access Fact Report at 5.

[17] Fact Report at 2-5 (describing the market), 9-24 (describing the ease with which competitive carriers can and do extend their networks and offer service to customers not already served by their fiber networks).

[18] SBC notes in this regard that a coalition of competitive fiber providers has asserted before this Commission that its members "provide, or will provide, advanced fiber-based transport services . . . to end users and other telecommunications carriers. Coalition members offer these services and products *in virtually every region of the 'lower 48' states and the District of Columbia*." Coalition of Competitive Fiber Providers, Petition for Declaratory Ruling Regarding Application of Sections 251(b)(4) and 224(f)(1) of the Communications Act of 1934, as Amended, to Central Office Facilities of Incumbent Local Exchange Carriers, CC Docket No. 01-77, filed March 15, 2001, at 1.

Indeed, special access competition now is so widespread that, under the Commission's "market-based" framework for measuring special access competition, markets generating 80 percent of BOC special access revenues qualify for Phase I pricing flexibility and markets generating nearly two-thirds of such revenues qualify for Phase II relief.[19] This framework measures the fraction of ILEC wire centers in an MSA in which competitors have obtained fiber-based collocation, which, as the D.C. Circuit found, reasonably can predict competitive constraints on LEC behavior.[20] As both the Commission and D.C. Circuit have recognized, this framework, if anything, understates the level of competition for special access services because it does not account for competitors that have wholly bypassed incumbent LEC facilities.[21] Competition for special access services thus is even keener than these numbers indicate.

C. Special Access Performance Measures are Unnecessary

Given that the Commission has concluded that the pricing flexibility triggers constrain an incumbent LEC's ability to set unreasonable prices, it is difficult to see how the Commission could conclude that incumbent LECs simultaneously maintain the ability to sustain unreasonable service quality. The same market forces that constrain anticompetitive pricing assure that carriers will provide the service options (including quality of service and service guarantees) that customers demand. Indeed, carriers,

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[19] *Id.* at 6-7.

[20] *WorldCom v. FCC*, 238 F.3d 457, 459 (D.C. Cir. 2001). The Court also agreed with the Commission that analyzing competition at the MSA level was appropriate because MSAs "best reflect the scope of competitive entry." *Id.* at 461.

[21] *WorldCom v. FCC*, 238 F.3d at 462 (quoting *Pricing Flexibility Order* at para. 95).

including incumbent LECs like SBC, already have responded to customer demand by offering a variety of service options that provide customers the mix of service quality and price that best meets their business needs.

SBC's standard special access tariffs already contain performance measurements and penalties for missing certain targets, including targets relating to service installation on-time performance and service interruption.[22] SBC also has developed a contract-based tariff option (the MVP), which contains additional, premium performance standards and substantial liquidated damages (in the form of MVP-SLA Level 1 credits) if the relevant operating company does not meet it's commitments relating to On-Time Performance, Failure Frequency, and Time To Restore. The MVP-SLA (Service Level Assurance)

[22] *See*, *e.g.*, Southwestern Bell Telephone Company, Tariff No. 73, Sections 2.5.5 Missed Installation on Confirmed Due Date, 2.5.6 Credit Allowance for Service Interruptions, 2.5.7 Service Assurance Warranty Schedule; Ameritech Operating Companies, Tariff FCC No 2 Section 2.4.4 Credit Allowance for Service Interruptions, 7.4.15 Installation Interval Guarantee; Pacific Bell Telephone Company, Tariff FCC No. 1, Section 2.4.4 Maintenance Commitment Program, 2.4.5 Provisioning Commitment Program; Nevada Bell Telephone Company, Tariff FCC No. 1, Section 2.4.4 Credit Allowance for Service Interruptions; Southern New England Telephone Company, Tariff FCC No. 39, Section 2.11.6 Service Installation Guarantee, 2.12.2 Credit Allowance for Service Interruptions and Service Maintenance Guarantee. In general, each of SBC's standard special access tariff performance measurements programs provides a financial credit if certain parameters are not met. Under the Provisioning tariff plans, customers normally receive a credit of all Non-Recurring Installation charges for a missed due date. Under the Maintenance tariff plans, customers generally receive a credit for all or a portion of the monthly recurring rate for a service that had maintenance problems. An example of the Provisioning tariff plan is SWBT's Tariff No.73, Section 2.5.5 Missed Installation on Confirmed Due Date. This plan provides credits of all Non-Recurring Installation charges associated with the missed due date on the installation of the customer's service. An example of the Maintenance tariff plan is PB Tariff No.1, Section 2.4.4 Maintenance Commitment Program. This plan provides credits for circuit outages that last more than 30 minutes. In addition, outages greater than 4 hours result in credits that equal roughly one-half of the monthly recurring rate for the particular service. These examples show the types of value-added product enhancements that SBC's uses to differentiate it's special access product line from competitors.

service performance targets progressively become more stringent over each year of the MVP contract agreement. For example, SBC's MVP tariffs establish an On-Time Provisioning standard for DS1 service that requires SBC to provision 90 percent of DS1 circuits on time in the first year of the MVP agreement. This standard becomes progressively more stringent over the life of the agreement, increasing to 95 percent in the second year, 95.6 percent in the third, 96.2 percent in the fourth, and 96.7 in the fifth year. The MVP-SLA tariff provides customers with additional service level assurance credits (in the form of MVP-SLA Level 2 credits) if SBC fails to meet Level 2 service targets.[23] Approximately one-third of SBC's special access revenue currently is subject to the MVP tariffs, and SBC is negotiating MVP arrangements with other carriers and customers. These plans were adopted in response to growing competition for special service — demonstrating that the market is working.

In addition, SBC has collaborated with certain individual customers to develop special access performance plans tailored to those customers' specific needs and business plans. For example, SBC has collaborated with WorldCom to fashion an extensive Access Performance Service Objective Plan, pursuant to which SBC measures, among other things, on-time performance, new circuit failure rate, and mean time to restore. In total, SBC provides WorldCom 38 access performance measurements on a monthly basis. SBC also meets with WorldCom on a quarterly or more frequent basis to discuss service improvement plans. SBC likewise has negotiated special access performance plans with

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[23] *See* Southwestern Bell Telephone Company, Tariff F.C.C. No. 73, Section 38.2; Ameritech Operating Companies, Tariff F.C.C. No. 2, Section 19; Pacific Bell Telephone Company, Tariff F.C.C. No. 1, Section 22.

Time Warner, Cable & Wireless, PacWest, and AT&T, which are tailored specifically to their needs.[24]

State commissions examining these performance plans and remedies have concluded that they are sufficient. For example, the Indiana Commission concluded:

> Ameritech Indiana provides performance data to CLECs for services they purchase. Service credits are available when performance parameters are not met. Therefore, the Special Access tariffs address the issue of what remedies exists if Ameritech fails to perform. If the tariffs are insufficient, or if Ameritech fails to perform pursuant to the tariff, the proper course of action is a complaint against Ameritech or a request for an investigation in the appropriate forum. Thus, protections are in existence for CLECs who purchase Special Access service out of Ameritech Indiana's tariff.[25]

Likewise the Public Utilities Commission of Ohio (PUCO) has concluded that Ameritech' special access tariffs provide protection if Ameritech does not provide adequate special access services.[26]

In each of these cases, market forces, not regulation, impelled SBC to develop service quality plans to meet the needs of its customers. That is because in competitive markets, like the special access market, service providers cannot ignore the needs of their

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[24] In fact, when the Texas PUC was considering establishing special access PMs, AT&T asked the PUC not to take any action that would preempt the performance measures it had negotiated with SBC.

[25] IURC, Cause No. 41657, 8/8/01.

[26] *In the Matter of the Investigation into Ameritech Ohio's Entry into In-Region InterLATA Service Under Section 271 of the Telecommunications Act of 1996*, PUCO Case No. 00-942-TP-COI, para. 40 (Dec. 20, 2001) (concluding that, because Ameritech's tariffs requires it to pay CLECs remedies if Ameritech fails to provide adequate service for special access, the PUCO would not incorporate such services into Ameritech's Ohio User Guide). While SBC does not believe states have any authority under the Act to regulate interstate access services, these decisions demonstrate that SBC's existing special access tariffs already assure service quality.

customers, but rather must provide the mix of price and quality of service their customers demand. Consequently, there simply is no need for the Commission to subject special access services (which are the most competitive of all incumbent LEC services) to increased regulation; regulation that exceeds that which applied before competition emerged and ILECs were the sole providers of special access.

D. Special Access Performance Measures will Distort the Market and Limit Customer Choice.

Mandatory special access performance measures are not only unnecessary, they would derail market-based solutions and inhibit flexibility, forcing carriers to meet government requirements rather than the needs of their customers. In addition, they would increase carriers' costs, which inevitably would be passed on to consumers. Moreover, if applied only to incumbent LECs, special access performance measures would distort competition.

Regulatory "solutions," such as mandatory performance requirements, are inherently problematic. It is difficult, if not impossible, for *any* administrative agency to establish the "right" performance measures in the first instance – assuming there even is such a thing — much less ensure that those PMs are revisited and updated on a timely basis. Indeed, in negotiating special access performance plans with its customers, SBC has found that different customers place different values on different performance measurements, depending on their unique business needs. Rather than imposing "one-size fits all" measures, the Commission should avoid micromanagement of this nature,

particularly where, as here, there is every reason to believe that the market will address any performance problems.

Carriers can negotiate the level of service they require and for which they are willing to pay. Particularly with pricing flexibility, ILECs now have a much greater ability to enter into contracts that are designed to meet the specific quality and pricing needs of individual customers. If a particular customer wants plain vanilla, they can purchase it. If they want Cherry Garcia (*i.e.*, more stringent service guarantees), and are willing to pay for them, they can get those too. Requiring carriers to meet stringent performance measurements and standards will limit these options, raising the cost of service for all and forcing a customer that wants plain vanilla to pay for service options or guarantees they neither want nor need.

Mandatory special access performance requirements, to the extent they apply only to ILECs, also would distort burgeoning competition in the special access market. As discussed above, 80 percent of SBC's special access revenue comes from one quarter of the wire centers in which it offers special access, which constitute less than one-quarter of SBC's total wire centers. Today, competitive providers of special access services are present in most, if not all, of these wire centers. Imposing special access performance requirements only on incumbent LECs would, as the Commission has recognized,[27] skew competition in this market by subjecting them to a different and more costly set of

[27] *See Access Charge Reform,* CC Docket No. 99-262, FCC 99-206, Fifth Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 14221, 14232-33 (1999) ("Although our current price cap regime gives LECs some pricing flexibility and considerable incentives to operate efficiently, significant regulatory constraints remain. As the market becomes more competitive, such constraints become counter-productive.").

regulatory requirements than their competitors. Consequently, the Commission should not impose special access performance requirements solely on incumbent LECs.

III. Conclusion.

Interjecting additional regulation into a competitive market, like the special access market, would be antithetical to one of the prime objectives of the Telecommunications Act of 1996 — to "provide for a pro-competitive and de-regulatory national policy framework" for telecommunications.[28] It also would be contrary to this Commission's long-standing policy of allowing market forces to replace government prescription in competitive markets. Rather than relaxing regulation as competition takes hold, the Commission would be turning the regulatory screws tighter, imposing more regulation than it applied when incumbent LECs were the sole suppliers of special access services. Such action would make no sense, especially after the Commission effectively deregulated a substantial portion of the special access market in light of rapidly expanding competition. The Commission therefore should not impose special access performance measures and standards.

Respectfully submitted,

/s/ Christopher M. Heimann
Christopher M. Heimann

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[28] *See Biennial Regulatory Review — Telecommunications Service Quality Reporting Requirements*, CC Docket No. 00-229, Notice of Proposed Rulemaking, 15 FCC Rcd 22113, 22114 (2000) (stating that the purpose of the Act is "[t]o promote competition *and reduce regulation* in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies ") (quoting Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56).

Gary L. Phillips
Paul K. Mancini

SBC COMMUNICATIONS INC.
1401 Eye Street, N.W., Suite 400
Washington, D.C. 20005
(202) 326-8909 – Voice
(202) 408-8745 -- Facsimile

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